

Mrs. Bland is not liable for the payment of debts, that or the "Bland Air" farm must be so applied, and thus the property on which and in respect of which the charge of the annuity of \$600 was imposed, would be diminished whilst the charge itself would remain in full force.

Upon the whole, then, and in view of all the circumstances of this case, I am of opinion, that the property bequeathed generally to Mrs. Bland, was liable for the payment of the debts of the testator, and the expense of the administration of his estate before the specific bequests could be resorted to, and that there is nothing in the agreements and acts of the parties which precludes the executor from raising the question in this cause. And I am also of opinion, that the technical objection to the frame of the bill cannot be maintained. The bill alleges that the cash on hand and moneys due the deceased, and proceeds of the personal property, so as aforesaid, sold by the executor, with the consent of Mrs. Bland, were applicable to the payment of debts, and prays that the same may be so applied, and that the judgment against the complainant rendered in pursuance of the agreement before referred to, shall be so corrected and reduced as to require him to pay interest only on the sum actually due from him, after applying said cash and proceeds and the money received from the Virginia fund to the payment of the debts of the testator; and for this purpose that an account may be taken in this court. There is, to be sure, no express allegation in the bill that the devises and bequests to Mrs. Bland exceed the value of her common law rights. But when the bill avers, as it does, that the property so bequeathed and money is liable to pay debts, if that liability depends upon the fact that the benefits taken by Mrs. Bland under the will are greater than her legal rights, the fact itself must be regarded as substantially averred.

The case of *McCormick vs. Gibson* is not an authority to prove that this question may not be presented without an explicit averment in the bill, of the excess of the provision over the common law rights of the widow. The court, in that case, held the widow to be entitled to the provision made for her by